P & C Lighting Center, Inc. *and* International Brotherhood of Electrical Workers Local 139 Annuity, Welfare, Pension and Education Funds. Case 3–CA–14751

February 26, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On February 27, 1990, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions and a supporting brief, the Charging Party filed exceptions, a supporting brief, and an answering brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authorty in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions,[1] to modify the remedy[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, P & C Lighting Center, Inc., Hornell, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

''(a) Make whole employees covered by the 1985–1990 agreement as well as hiring hall applicants who should have been employed for any losses they may have suffered as a result of the Respondent's failure to adhere to the contract since November 2, 1987, in the manner set forth in the remedy section of the judge's decision, including reimbursing employees any expenses ensuing from the Respondent's unlawful failure to make required trust fund contributions.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT, during the term of a collective-bargaining agreement, repudiate that agreement with Local 139, International Brotherhood of Electrical Workers, as the exclusive collective-bargaining representative of our employees covered by the agreement.

WE WILL NOT refuse to adhere to our 1985–1990 collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our employees, as well as hiring hall applicants who should have been employed, whole, with interest, for any losses they may have suffered as a result of our failure to adhere to the 1985–1990 contract with the Union, since November 2, 1987, and WE WILL reimburse employees for any expenses ensuing from our failure to make trust fund contributions.

WE WILL whole the International Brotherhood of Electrical Workers Local 139 Funds for any losses they may have suffered as a result of our failure to adhere to the 1985–1990 contract with the Union, since November 2, 1987.

P & C LIGHTING CENTER, INC.

Michael J. Israel, Esq., for the General Counsel.
Joseph J. Steflik Jr., Esq. (Twining, Nemia, Hill & Steflik, Esqs.), of Binghamton, New York, for the Respondent.
James R. LaVaute, Esq. (Blitman & King, Esqs.), of Syracuse, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Pursuant to a charge filed on December 30, 1988, by the International Brotherhood of Electrical Workers Local 139 Annuity, Welfare, Pension and Education Funds (the Charging Party), a complaint was issued against P & C Lighting Center, Inc. (the Respondent), by Region 3 of the National Labor Relations Board (the Board) on February 10, 1989.

The complaint, as amended, alleges that Respondent (a) signed a letter of assent delegating its collective-bargaining authority to an employer association and is therefore bound to the most recent prehire collective-bargaining agreement

[1] In adopting the judge's finding that the charge was not time-barred under Sec. 10(b) of the Act, we find it unnecessary to pass on his conclusion that the Respondent fraudulently concealed the fact that employees performing bargaining unit work were employed after November 1, 1987, in light of his finding that the Union clearly did not have notice that the Respondent employed such employees until after commencement of the 10(b) period. See, e.g., *Walker Construction*, 297 NLRB 746 (1990).

[2] Interest to be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[3] We shall modify the recommended Order to provide that employees be reimbursed for any expenses they incurred by virtue of the Respondent's unlawful failure to make trust fund contributions. See *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980). Additionally, we shall modify the recommended Order to cover any individuals who were denied opportunity to work for the Respondent because of the Respondent's unlawful refusal to continue using the hiring hall. Determination of whether such individuals exist is left to the compliance stage of this proceeding. See *Viola Industries*, 286 NLRB 306, 308 fn. 10 (1987), and *Rappazzo Electric*, 281 NLRB 471, 483 (1986). See also *W. E. Colglazier, Inc.*, 289 NLRB 1219 (1988).

and (b) has failed and refused to adhere to the terms and conditions of that contract and has thereby repudiated it. The complaint alleges that Respondent has failed and refused to bargain with Local 139, International Brotherhood of Electrical Workers (the Union) in violation of Section 8(a)(5) of the Act.

The Respondent's answer denied the material allegations of the complaint and alleged certain affirmative defenses which will be addressed, infra.

On April 26 and 27, 1989, a hearing was held before me in Hornell, New York. On the entire case, including my observation of the demeanor of the witnesses and after consideration of the briefs filed by all parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, having maintained an office and place of business at Airport Road, Hornell, New York, is and has been continuously engaged therein in the business of providing and performing residential, commercial, and industrial electrical wiring, installation, repair and maintenance services, and related services.

Respondent stipulated that during the calendar year ending December 31, 1988, in the course and conduct of its business operations, it purchased and received at its Hornell facility products, goods, and materials valued in excess of $50,000 from other enterprises, including Westinghouse Supply and Gersh Electric, located within New York State, which other enterprises have received the products, goods, and materials directly from outside New York State.

Respondent has further admitted as follows: That certain employers have signed a ''letter of assent-A'' delegating their collective-bargaining authority to the Southern Tier Chapter of the National Electrical Contractors Association (the Association). During the calendar year ending December 31, 1988, in the course and conduct of their business operations, those certain employers collectively purchased and received at their facilities located within New York State, products, goods, and materials valued in excess of $50,000 from other enterprises, which other enterprises have received the products, goods, and materials directly from points outside New York State. It being understood that the validity of the Respondent's ''letter of assent-A'' is in issue in this proceeding.

I find that the Board has jurisdiction over Respondent. Respondent has admitted facts which support a finding that Respondent is engaged in commerce within the meaning of the Act based on an indirect inflow standard. *Siemons Mailing Service*, 122 NLRB 81, 85 (1958), in which the Board stated that jurisdiction would be asserted over all nonretail enterprises which have indirect inflow of at least $50,000—enterprises which purchase goods which originated outside the Employer's State but which it purchased from a seller within the State who received such goods from outside the State. Based on this standard, Respondent stipulated that it received goods valued in excess of $50,000 from Westinghouse and Gersh, both of which are located within New York State, but which had received the goods directly from outside New York State.

In addition, in *Stack Electric*, 290 NLRB 575, 576 (1988), the Board dealt with similar issues to those presented here, including an identical letter of assent-A. The Board, in finding that the respondent there, as here, was primarily engaged in the building and construction industry, noted that it had signed a letter of assent. The Board stated:

> We conclude that the delegation of bargaining authority contained in those Letters of Assent is sufficient to warrant the assertion of jurisdiction because it indicates the individual Respondent's intent to be bound by group action, rather than individual bargaining.
>
> By throwing in their lot with the multiemployer association, at least for purposes of negotiating a collective-bargaining agreement, the Respondents joined forces with a group in an activity that has an indisputable impact on commerce so far as the Act we administer is concerned.

Inasmuch as I find, infra, that Respondent is bound by the letter of assent which it signed, I further find that it joined forces with the Association and jurisdiction over the Respondent is therefore warranted.

Respondent has admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The Union and the Association are parties to a collective-bargaining agreement which runs from June 1, 1985, through May 31, 1990. It contains the following provisions:

> It shall apply to all firms who sign a Letter of Assent to be bound by this Agreement. (First Clause)
>
> The Employer recognizes the Union as the exclusive representative of all its employees performing work within the jurisdiction of the Union for the purpose of Collective Bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment. (Section 2.02)
>
> The Union shall be the sole and exclusive source of referrals of applicants for employment. (Section 4.02)

Employers subject to the agreement are required to submit monthly reports to the Charging Party showing the numbers of employees employed, the amount of hours worked and wages earned, and the sums submitted to the Charging Party.

On April 1, 1981, Respondent employed electrician Stanley Ambuski.[1] At that time, Respondent's president, Robert Panter, signed ''letter of assent-A.''

The document states:

> In signing this letter of assent, the undersigned firm does hereby authorize Southern Tier Chapter of the National Electrical Contractors Association as its collective-bargaining representative for all matters contained in or pertaining to the current approved inside labor agreement between the Southern Tier Chapter of the National Electrical Contractors Association and Local

[1] Respondent states that it also employed three other employees at that time. This will be discussed, infra.

> Union 139, IBEW. This authorization, in compliance with the current approved labor agreement, shall become effective on the first day of April, 1981. It shall remain in effect until terminated by the undersigned employer giving written notice to the Southern Tier Chapter of the National Electrical Contractors Association and to the Local Union at least 150 days prior to the then current anniversary date of the aforementioned approved labor agreement.[2]

There is no evidence that Respondent had exercised its right to terminate the Association's authority to bargain on its behalf.

Charles Patton, the Union's business agent and financial secretary, testified that the contract covers all employees doing electrical work. The classifications set forth in the contract include probationary apprentices, indentured apprentices, indentured apprentices, and journeymen.

From at least 1984, Respondent became delinquent in its payment obligations to the Charging Party. On May 30, 1986, Panter signed a stipulation for entry of judgment, in which he agreed that certain moneys were due to the Funds, and agreed to pay them. The stipulations contains the following statements, sworn to by Panter:

> That the defendant Corporation is bound to a collective-bargaining agreement between Southern Tier Chapter of the National Electrical Contractors Association and Local 139 IBEW.
>
> That pursuant to said collective-bargaining agreement, the defendant Corporation agreed to report to the Local 139 Funds the number of hours worked by each of its employees covered under the said agreement, and agreed to make certain contributions and deductions to the Local 139 Funds and the Union for each hour each of the employees worked.

In addition, Panter testified that he has had collective-bargaining agreements with the Union continuously since 1981, and that at the time of the hearing he had a contract with the Union which is still in effect.

Union official Patton testified that, to his knowledge, Ambuski was the only employee employed by Respondent in November 1987. From 1981 to November 1987, Respondent's monthly reporting forms listed only Ambuski's name. In about November 1987, Ambuski told Patton that he was quitting his job with Respondent because Respondent was not current in its payments to the fringe benefit funds, and that Ambuski believed that he might lose his health insurance coverage. In fact, a lawsuit was in progress at that time to collect sums of money owed to the Funds.

After Ambuski left Respondent's employ in about November 1987, Respondent did not notify the Union that it was employing any employees performing electrical work, did not submit any monthly reporting forms to the Charging Party, and made no requests for employees from the Union pursuant to the exclusive hiring hall provisions of their contract.

The Union argues that since November 1987, Respondent has employed employees covered by the collective-bargaining agreement, but has not adhered to the terms of the contract by not paying its employees the contractual wages and benefits, submitting monthly reports, or making payments to the Funds.

The evidence demonstrates that Respondent employed certain employees since November 1987. However, Respondent disputes whether they are covered by the contract. It asserts that certain of the employees were laborers and therefore not included within the contract. It further argues that at various times, only one electrician was employed by it, and therefore a one-person bargaining unit cannot be made the subject of this proceeding.

During the period at issue, Respondent performed extensive electrical contracting services for various organizations including Crowley Foods, Inc., Ponderosa Restaurant, and St. Ann's Church and School. The prices charged by Respondent for those jobs were $214,000 for Crowley, $49,000 for Ponderosa, $7,000 to $10,000 for St. Ann's Church, and $6,000 for St. Ann's School.

In about July or August 1988, Patton noticed an article in a Hornell newspaper which said that Respondent's wholesale and retail divisions would be sold, but that it would retain its contracting business. Panter was quoted as saying that Respondent is ''the largest electrical contractor in the area and has been for many years.''

Patton asked John Price, the Union's recording secretary, to try to determine if Respondent was performing electrical contracting work. Price discovered that Respondent was employed at Crowley Foods, Inc., a dairy establishment. In about October or November, Price visited the site and was told that Respondent was performing electrical work there. On December 19, he again visited the site and spoke to Jody Brizzee, an employee of Respondent. Price identified himself and told Brizzee that Respondent had a contract with the Union to secure electricians from the Union. Brizzee identified himself as an electrician, and said that four other electricians were employed on that job: Michael D'Antonio, Wesley Merrick, Lee Knapp, and Roger Price.

On January 13, 1989, Patton and Price visited the jobsite. They spoke to Brizzee and D'Antonio. D'Antonio said that he was doing electrical work for many years. Brizzee asked about the apprenticeship program, and Patton asked him to submit an application.

Brizzee testified that he has been employed by Respondent for about 1 year. He stated that he has worked at Crowley Foods, installing conduits, which is the pipe through which electrical wire is placed, pulling wires, which is the process of putting wires through the conduit and through walls or partitions, and installing light fixtures. He also installs electrical switches, receptacles, and junction boxes. He connects wiring to the switches, receptacles, and junction boxes. He stated that D'Antonio, Merrick, and Price worked on that job with him, adding that Merrick and Price did the same type of work he did. Brizzee also testified that D'Antonio was the

[2] The letter of assent also contains the following:

> In accordance with Orders issued by the U.S. District Court for the District of Maryland on October 10, 1980 in Civil Action HM-77-1302 if the undersigned employer is not a member of the [Association], this letter of assent shall not bind the parties to the provision in the above mentioned agreement requiring payment into the National Electrical Industry Fund unless the above Orders of Court shall be stayed, reversed on appeal or otherwise nullified.

No evidence has been presented regarding this paragraph, and it does not appear to be in issue here. It should be noted that Respondent, which is not and has not been a member of the Association, had been sued for failing to make payments to the National Employees Benefit Fund, and not the National Electrical Industry Fund.

main electrician on that job, who made connections involving live wires and main switches. D'Antonio also helped run conduit, pull wire, and helped install fixtures. D'Antonio used the same tools Brizzee did, and did the same type of work Brizzee performed.

Brizzee stated that the installation work that he performed consisted of him taking the conduit, switch covers, and junction boxes and mounting them on the wall. He runs wires to those receptacles or boxes. He also mounts light fixtures, and makes the electrical connections between a series of fixtures to the main service box. However, he does not make the connection in the main service box with the live electricity, which is done by the electricians.

Brizzee estimated that one-third to one-half of his time on that job consisted of carpentry work including welding, building wooden forms for concrete, and masonry work. He welded duct work and brackets to hold conduits and junction boxes. The concrete work was necessary in order to build platforms for the electrical transformers and other equipment. He also had to patch walls where he had made holes to fit the conduit. Brizzee also carries the electrical material to the jobsite, either from the shop, or from an area on the site where it has been placed, to where the employees are working.

Brizzee testified that he considers himself a laborer, not an electrician, because he does more installation work than actual connections, and the nature of his duties such as welding, concrete, and carpentry does not involve electrical work.

Brizzee further testified that on jobs performed at St. Ann's Church and School the great majority of his time was spent doing electrical installation work. At the Ponderosa Restaurant, all of his time was spent on electrical materials.

Respondent's president, Panter, testified that Brizzee's testimony was fairly accurate, adding that his job, as a laborer, was to assist the electrician in the work he testified to. Panter stated that he disagreed with Brizzee's estimates of time spent on certain activities, however he conceded that Panter was not present at all times at all projects on which Brizzee worked.

Brizzee earned $4.25 per hour when he began work in January 1988, and at the time of the hearing, according to the payroll records, earned $5 per hour. He testified that he pays for half of his medical insurance, and receives no other benefits.

Regarding the other employees, Respondent's payroll records disclose as follows:

Anthony Cappadonia, who Respondent concedes is an electrician, became employed in July 1987. In November 1987 he earned $7.75 per hour, and at the time he left Respondent's employ in October 1988, he earned $8.50.

Michael D'Antonio, who Respondent also asserts is an electrician, was hired by Respondent in August 1983. He earned $9.25 per hour from November 1987 to April 1989.

Lee Knapp, who Respondent identifies as a laborer, began his employ in March 1987. In November 1987, he earned $6.50 per hour, which was his wage rate in December 1988.

Wesley Merrick, called a laborer by Respondent, began work in July 1988. In November 1987, he earned $4.50 per hour. In April 1989, his wage rate was $5.

Roger Price, a laborer according to Respondent, earned $5.25 in November 1987. In April 1989, he earned $6.

The wage rates set forth above, are below those for electricians and helpers set forth in the 1985–1990 collective-bargaining agreement.

B. *Analysis and Discussion*

1. Respondent's obligations under the collective-bargaining agreement

The complaint alleges that ''since on or about a date subsequent to November 1, 1987 . . . Respondent has failed and refused to adhere to the terms and conditions of the most recent pre-hire collective-bargaining agreement [1985–1990] and has thereby repudiated that agreement.''

The provisions of Section 8(f) apply only to ''an employer engaged primarily in the building and construction industry.'' The Board has defined that industry as one in which the work involves ''the provision of labor whereby materials and constituent parts may be combined on the building site to form, make or build a structure.'' *Teamsters Local 83 (Stanley Matuszak)*, 243 NLRB 328, 330 (1979). There is no question here that Respondent is such an employer.

Section 8(f) of the Act provides, in relevant parts:

> It shall not be an unfair labor practice . . . for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged . . . in the building and construction industry with a labor organization of which building and construction employees are members . . . because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement.

Prior to the Board's change in the law governing 8(f) agreements, it held that an 8(f) agreement may be repudiated by either party, at any time, for any reason, and cannot be enforced through Section 8(a)(5) of the Act. The law at that time also provided that an employer could test the union's majority status by unilaterally repudiating the agreement and litigating the union's status in an 8(a)(5) refusal-to-bargain proceeding.

In *John Deklewa & Sons*, 282 NLRB 1375 (1987), the Board reversed its reliance on the earlier concepts, and set forth new principles governing an 8(f) relationship, including that (a) a collective-bargaining agreement permitted by Section 8(f) shall be enforceable in an 8(a)(5) proceeding (b) ''when parties enter into an 8(f) agreement, they will be required, by virtue of Section 8(a)(5) and Section 8(b)(3) to comply with that agreement.'' and (c) employers who are party to 8(f) agreements are not free unilaterally to repudiate such agreements.

Respondent's president, Panter, admitted that he signed the letter of assent in 1981, and has had continuous collective-bargaining agreements with the Union since that time, and indeed stated that at the time of the hearing, Respondent's contract with the Union was still in effect. Moreover, in May 1986, the stipulation executed by him stated that Respondent was bound to a collective-bargaining agreement with the Union.

The letter of assent signed by Panter provides that the authorization given to the Association remains in effect until written notice is given at least 150 days prior to the expira-

tion of the then current agreement. There has been no evidence that such notification has been given. Accordingly, Respondent was bound to the 1981 collective-bargaining agreement between the Association and the Union, and to all subsequent agreements.

Under identical circumstances, the Board has found that employers who voluntarily entered into 8(f) relationships with a union by executing letters of assent, were bound to the current collective-bargaining agreements with the Association, and in the absence of timely notification of withdrawal from the Association, the Board has found, pursuant to *Deklewa*, that the successor agreement was ''binding, enforceable, and not subject to unilateral repudiation by the Respondent.'' *Riley Electric Inc.*, 290 NLRB 374 (1988); *City Electric, Inc.*, 288 NLRB 443 (1988); *Reliable Electric Co.*, 286 NLRB 834 (1987).

I accordingly find and conclude that by failing to adhere to the collective-bargaining agreement, Respondent has thereby repudiated it and has violated Section 8(a)(5) and (1) of the Act.

2. Respondent's Defenses

Respondent asserts that it did not voluntarily enter into an 8(f) relationship with the Union. Respondent's president, Panter testified that in late March 1981, his company was performing a 2-year job for the National Fuel Gas Company. Joseph Clements, the Union's business manager at that time, told him that because Respondent was nonunion the Union would picket the jobsite and shut it down unless he signed the letter of assent. At that time, Panter had three electricians and one laborer working at that jobsite. According to Panter, he told Clements that neither he nor the employees were interested in the Union. Clements was only interested in having Stanley Ambuski become a member of the Union. He allegedly did not seek membership for Ken Austin, because he was due to retire shortly, or John DuPont, because he was a ''troublemaker.'' Panter testified that Clements said that Roy Berger, the laborer, would not qualify for the apprentice program, and he similarly did not seek membership for him. Clements did not testify.

Some doubt is cast on Panter's testimony in this regard. A letter from the Union dated April 17, 1980, was received in evidence. It states as follows:

> In regard to the meeting that was held Wednesday, February 13, 1980, it was my understanding that you would do the Beach Hill Pumping Station Job under Local 139's present agreement and that any additional man power would be coming out of this Local. If this is agreeable, please sign below and return to me and I in turn will send you a copy. After July 1, 1980, I hope we can get together and get a permanent agreement signed.

The letter bears Panter's signature. When shown this letter he modified his testimony to state that the conversation with Clements in which Clements threatened to shut the job may have been held 1 year earlier, in February 1980, rather than in March 1981.

Moreover, this allegation of coercion in signing the letter of assent, occurring more than 6 months before the charge here was filed, is beyond the 10(b) statute of limitations. *Stack Electric*, supra at 586–587.

Respondent made contributions to the Charging Party's Funds and paid wages to Ambuski generally in accordance with the terms of the collective-bargaining agreement between the Association and the Union.[3] After Ambuski left Respondent's employ on about November 1, 1987, Respondent ceased making any contributions, reporting any employees in its employ, and filing the required reports.

Respondent asserts that its ''laborer'' employees are not properly includible in the unit of employees encompassed in the collective-bargaining agreement. The complaint sets forth the following employees as being an appropriate collective-bargaining unit:

> All journeymen and apprentice electricians employed by Respondent . . . excluding all office clerical employees, and professional employees, guards and supervisors as defined in the Act.[4]

Respondent argues that the practice in the Hornell, New York area is to employ an electrician and a number of laborers who assist the electrician. General Counsel argues that the ''laborers'' are apprentices who perform electrical work, and for whom Respondent was obligated to adhere to the contract terms. I agree with General Counsel. Jody Brizzee testified that he and the other ''laborers,'' Knapp, Merrick, and Price, perform electrical work, including running conduit and wires, mounting junction boxes, switches and receptacles, and hanging and wiring fixtures together. Panter conceded that with regard to certain of that work, they ''assist'' the electrician. This work is identical to the work which John Price, a journeyman wireman electrician, testified that he performs. Brizzee also testified that he performs concrete work, such as building pads for transformers and other equipment, welds brackets to support conduit, drills holes in walls, and patches holes. Although this would not ordinarily appear to be electrical work, Union Business Manager Patton testified that it would be if it was related to electrical work being performed. Moreover, such work encompasses only part of his work.

It accordingly appears that Brizzee, Knapp, Merrick, and Price are engaged in the work which apprentices in the electrical industry normally perform. The collective-bargaining agreement does not require that persons performing such work spend all their time doing strictly electrical work. Indeed, apprentices while doing such work are engaged in on-the-job training.[5]

Moreover, it does not appear that Respondent was acting in good faith in its assertion that it was not required to make

[3] As set forth above, legal proceedings were brought at various times in order to require Respondent to pay certain sums which were in arrears.

[4] In *Deklewa*, supra at 1385, the Board held that ''single employer units will normally be appropriate.'' In this connection, I reject Respondent's affirmative defense that the Union does not represent a majority of its employees. Sec. 8(f) eliminates majority status as a prerequisite for signing a contract. In *Deklewa*, the Board abandoned the old principles which permitted employers to test the union's majority status by unilaterally repudiating the agreement and litigating the union's status in an 8(a)(5) proceeding.

[5] The fact that none of the ''laborers'' are enrolled in the Union's apprenticeship program does not affect my finding here. Brizzee applied to that program and was rejected because his background in mathematics was deemed insufficient. However, Union Official Patton testified that Brizzee could still be referred to employment by the Union as an indentured apprentice or helper.

any reports to the Union or the Charging Party because it employed only one electrician, D'Antonio. The evidence establishes that from July 6, 1987, when conceded electrician Cappadonia was hired, to October 28, 1988, when he quit, Respondent employed both D'Antonio and Cappadonia. Nevertheless, no reports were made as to Cappadonia's employment. This finding is supported by Panter's testimony that he was aware that employees who were called ''laborers'' earned less money than those represented by the Union, and such lower earnings made a ''difference from a competitive standpoint.''

Respondent further argues that it currently employs one electrician, Michael D'Antonio, who is a supervisor, and accordingly the Board may not certify a unit of only one employee. An analysis of the evidence concerning D'Antonio's supervisory status is unnecessary inasmuch as it is clear that Respondent employs more than one employee. Respondent employs four other employees—Brizzee, Knapp, Merrick, and Price. Whether they are called ''laborers,'' as argued by Respondent, or ''apprentices,'' as argued by General Counsel, they are still employees, performing electrical work for Respondent. Accordingly, I reject this argument of Respondent. Moreover, although the Board may not certify a one-person unit, such a unit may be lawfully recognized by an employer. As conceded by Respondent, although I make no such finding, it recognized the Union in 1981 for a unit of one employee—Stanley Ambuski.

Respondent further argues that the Board's decision in *Stack Electric*, supra, requires dismissal of the complaint. In that decision, the Board found that the appropriate units consist of ''no more than a single employee,'' and therefore the employers had no obligation to bargain with the union. The Board based its holding on its decision in *D & B Masonry*, 275 NLRB 1403, 1408 (1985), in which it stated:

> It is settled that if an employer employs one or fewer unit employees on a permanent basis that the employer, without violating Section 8(a)(5) of the Act, may withdraw recognition from a union, [and] repudiate its contract with the union . . . without affording a union an opportunity to bargain.

In *Stack Electric*, the Board found that in addition to the owners of the firms, other individuals were employed only intermittently. Here, however, Respondent's payroll records establish that its employees were full time, regular workers who generally worked 40 hours per week and, in addition, occasionally worked overtime. Moreover, the extensive nature of the electrical work contracted by Respondent certainly required the services of regularly employed persons who could perform such tasks. Accordingly, *Stack Electric* is factually distinguishable from this case.

I also reject Respondent's argument that the Board's jurisdictional dispute procedure is applicable here, pursuant to which its assignment of ''laborer's'' work to its unrepresented employees is appropriate. Such a procedure is available only where a violation of Section 8(b)(4)(D) has been alleged, and accordingly has no relevance here.[6]

[6] I similarly find no validity to Respondent's affirmative defense that the Charging Party had no standing to file the charge. Sec. 102.9 of the Board's Rules and Regulations states that a charge may be filed by any person which would, of course, include the Charging Party here.

Concluding Findings

The complaint alleges that since on or about a date after November 1, 1987, Respondent failed and refused to adhere to the terms and conditions of the most recent prehire collective-bargaining agreement between the Association and the Union, and has thereby repudiated that agreement.

The evidence establishes that from November 1, 1987, when electrician Stanley Ambuski left Respondent's employ, Respondent did not adhere to the terms and conditions of the 1985–1990 collective-bargaining agreement. The wages and benefits provided to its employees who were covered by that contract were inferior to those set forth in that agreement. In addition, no required reports were made, and employees were not obtained through the Union's exclusive hiring hall.

I accordingly find and conclude that, as alleged in the complaint, Respondent by its conduct alleged therein violated Section 8(a)(5) and (1) of the Act.

The charge here was filed on December 30, 1988. Section 10(b) of the Act provides, in relevant part, that ''no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge.'' Accordingly, pursuant to that section, a complaint could not issue on any unfair labor practice which occurred prior to June 30, 1988. However, the complaint states that the unfair labor practices occurred on about November 1, 1987, and General Counsel seeks a remedy from that date.

The 10(b) period begins to run when the ''act'' giving rise to the unlawful conduct is known. *Al Bryant*, 260 NLRB 128, 135 fn. 19 (1982). The 10(b) period will not begin to run, however, in cases where the respondent has fraudulently concealed the facts from the injured party. In such cases, the limitations period does not begin to run until the fraud is discovered. *O'Neill Ltd.*, 288 NLRB 1354 (1988); *Burgess Construction*, 227 NLRB 765 (1977).

I believe that this case is an appropriate one for the application of the ''fraudulent concealment'' rule. Union official Patton credibly testified that he was not aware that Respondent employed any employees other than Ambuski. When Ambuski left the Respondent's employ on November 1, 1987, he did not know of any other employees who would be covered by the collective-bargaining contract with the Union. This belief was reinforced by Respondent's failure to report the additional employees it employed at that time, including electricians Cappadonia and D'Antonio and ''laborers'' Knapp and Price, and any employees employed thereafter, as required by the contract it was bound to. This fraudulent concealment of the true employment makeup at Respondent caused the Union to erroneously believe that no covered employees were working for the Respondent. It was only on reading a newspaper article concerning Respondent's business 8 months after Ambuski left that union official Patton was alerted to the fact that Respondent may be employing employees covered by the contract. A timely investigation was made and the true facts were uncovered by the Union.

Under these circumstances, it is appropriate that the 10(b) period be tolled as of November 1, 1987.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All journeymen and apprentice electricians employed by Respondent at its Airport Road, Hornell, New York facility, excluding all office clerical employees, and professional employees, guards and supervisors as defined in the Act, constitute an appropriate unit of the Respondent's employees for the purposes of collective bargaining under the Act.

4. By repudiating its 1985–1990 collective-bargaining agreement with the Union on November 2, 1987, during the term of the collective-bargaining agreement, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

5. The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent be ordered to make whole, as prescribed in *Ogle Protection Services*, 183 NLRB 682 (1970), employees for any losses they may have suffered as a result of the Respondent's failure to adhere to the 1985–1990 agreement between the Southern Tier Chapter of the National Electrical Contractors Association and the Union since November 2, 1987, with interest, as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977), and to make whole the International Brotherhood of Electrical Workers Local 139 Funds for any losses they may have suffered as a result of the Respondent's failure to adhere to that agreement since November 2, 1987. *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, P & C Lighting Center, Inc., Hornell, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition during the term of a collective-bargaining agreement from Local 139, International Brotherhood of Electrical Workers, as the exclusive collective-bargaining representative of the Respondent's employees covered by the agreement.

(b) Refusing, from November 2, 1987, to adhere to its 1985–1990 collective-bargaining agreement with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole employees covered by the 1985–1990 agreement, in the manner set forth in the remedy, for any losses they may have suffered as a result of the Respondent's failure to adhere to the contract from November 2, 1987.

(b) Make whole the International Brotherhood of Electrical Workers Local 139 Funds for any losses they may have suffered as a result of the Respondent's failure to adhere to the contract from November 2, 1987.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Hornell, New York facility copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Sign and return to the Regional Director sufficient copies of the attached notice marked ''Appendix'' for posting by Local 139, International Brotherhood of Electrical Workers, if willing, in conspicuous places where notices to employees and members are customarily posted.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''